

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
11

12 JOSHUA D. LAMBERT,

CASE NO. 19-5980 RJB - JRC

13 Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION

14 v.

15 XLORMARA HEURTAS, ET AL.,

16 Defendants.

17 THIS MATTER comes before the Court on the Report and Recommendation of U.S.
18 Magistrate Judge J. Richard Creatura. Dkt. 79. The Court has considered the Report and
19 Recommendation (Dkt. 79), the Plaintiff's objections (Dkt. 82) and the remaining file.

20 The Report and Recommendation (Dkt. 79) should be adopted and the case re-referred to
21 Judge Creatura for further proceedings. The Plaintiff's objections do not provide grounds to
22 decline to adopt the Report and Recommendation. The Plaintiff summarily states that he "did
23 state a claim for free speech" and that "did state a claim for supervisory liability against Natasha
24

1 House,” (Dkt. 82) but he fails to provide any basis to support his assertions. The Plaintiff
2 maintains that his claims and the record have been mischaracterized (Dkt. 82), but does not
3 explain how. His objection that a decision should be made on the motion to dismiss his state law
4 claims, before he has a chance to amend his complaint, is without merit as is his assertion that all
5 the pleadings are closed so a ruling on his Fed. R. Civ. P 12(c) motion is appropriate. The
6 Report and Recommendation should be adopted, the Washington State Hospital defendants’
7 motion to dismiss should be granted, in part, and denied, in part; Plaintiff’s First Amendment
8 claim should be dismissed with prejudice and without leave to amend. Plaintiff’s supervisory
9 liability claim against defendant House should be dismissed but with leave to amend. The Court
10 should decline to rule on the sufficiency of plaintiff’s state law claims at this time. Further, the
11 Plaintiff’s Fed. R. Civ. P. 12(c) motion for a judgment on the pleadings should be denied without
12 prejudice as moot and as premature.

13 **IT IS ORDERED THAT:**

14 • The Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura
15 (Dkt. 79) **IS ADOPTED;**

16 (a) The Washington State Hospital defendants’ motion to dismiss is granted,
17 in part, and denied, in part; Plaintiff’s First Amendment claim is dismissed with
18 prejudice and without leave to amend. Plaintiff’s supervisory liability claim
19 against defendant House is dismissed but with leave to amend. The Court declines
20 to rule on the sufficiency of plaintiff’s state law claims at this time.

21 (b) Plaintiff’s motion for judgment on the pleadings is denied without prejudice as
22 moot and premature.

23 • The case **IS RE-REFERRED** to Judge Creatura for further proceedings.

24

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 2nd day of July, 2020.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge